

THE UN HUMAN RIGHTS COUNCIL'S REVIEW OF CHINA'S RECORD: PROCESS AND CHALLENGES

ROUNDTABLE

BEFORE THE

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JANUARY 16, 2009

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FRIDAY, JANUARY 16, 2009

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The roundtable was convened, pursuant to notice, at 10:02 a.m., in room 628, Dirksen Senate Office Building, Charlotte Oldham-Moore, Staff Director, presiding.

Also present: Douglas Grob, Cochairman's Senior Staff Member; Steve Marshall, Senior Advisor and Prisoner Database Program Director; Andrea Worden, General Counsel and Senior Advisor on Criminal Justice; and Lawrence Liu, Senior Counsel.

OPENING STATEMENT OF CHARLOTTE OLDHAM-MOORE, STAFF DIRECTOR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Ms. OLDHAM-MOORE. Good morning. I'm amazed at this turnout, given this cold weather is more like Harbin's or Lhasa's and not Washington, DC's. Thank you so much for coming.

My name is Charlotte Oldham-Moore. I'm Staff Director of the Congressional-Executive Commission on China. I'm joined by my colleague, Doug Grob, who is Staff Director to the Cochairman.

This is the first event of the Commission in the 111th Congress. The Commission is chaired by Senator Byron Dorgan, and co-chaired by Representative Sander Levin.

For those of you who are new to the Commission's work, I want to draw your attention to our 2008 Annual Report and also to our Web site: www.cecc.gov, which is an invaluable resource on China, and I urge you to visit it.

Today we will examine the UN Human Rights Council's upcoming review on China's human rights record. We have a very distinguished panel.

I will first introduce Ms. Felice Gaer. She is the Director of the American Jewish Committee's Jacob Blaustein Institute for the Advancement of Human Rights, and she is also the chair of the U.S. Commission on International Religious Freedom. Jim Feinerman is the James M. Morita Professor of Asian Legal Studies at Georgetown University Law Center, where he is also the co-director of Law Asia. He is a widely published expert on Chinese law.

Dr. Xiaorong Li is a senior research scholar at the Institute for Philosophy and Public Policy at the University of Maryland, where she also teaches. Her primary research areas are human rights, democratization, and civil society development. She is the author of

a book titled “Ethics, Human Rights, and Culture,” and many articles.

Ellen Bork is the Senior Program Manager for Human Rights at Freedom House. Before joining Freedom House, she was Deputy Director of the Project for the New American Century. She is widely published on China in the Washington Post, having done op-eds in Washington Post, Financial Times, among others, and I urge you to take a look at those pieces.

Ms. Gaer?

STATEMENT OF FELICE D. GAER, DIRECTOR, THE JACOB BLAUSTEIN INSTITUTE FOR THE ADVANCEMENT OF HUMAN RIGHTS AND CHAIR, THE U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

Ms. GAER. Thank you very much, and thank you for the invitation to be here. I’m delighted that you’re doing this.

The UN Commission on Human Rights has often addressed country-specific issues. That Commission was mentioned in the UN charter in 1945, the only subsidiary commission so mentioned. The commission started out by never mentioning countries, working only on identifying the norms of universal human rights, but by the 1970s, it had begun to address some country situations, and by the 1980s, there were visits to countries and more.

After the events at Tiananmen in 1989, the UN Subcommission on Human Rights adopted a resolution calling for an examination of the situation and criticism of the government of China. That went up to the Commission on Human Rights, and thereafter began a rocky period. There were attempts to address the human rights situation in China, and various countries stepped forward to present a resolution but they were always met with what was called a “no-action motion.” They were met with a lot of opposition. This procedural “no-action motion” was only defeated once, and that was in 1995. But even then, on a vote on the substantive issue of human rights in China, Russia changed its position. No surprise; it was in the midst of the first Chechnya conflict.

This effort to try to address Chinese human rights by virtue of a country-specific resolution in the Commission on Human Rights continued apace. The United States often presented a resolution alone because other countries that presented it were harassed and suffered various kinds of sanctions, threats, et cetera.

In the last years of Kofi Annan’s Secretary Generalship at the United Nations, he drew attention to the fact that the Commission on Human Rights had become increasingly dysfunctional, increasingly politicized, and that governments were running to be members of this Commission in order to protect themselves from criticism rather than to be there to help advance human rights. That was his analysis.

As a result of this, there was a discussion to create a new body to replace the Human Rights Commission. The original idea was to upgrade it to create a Human Rights Council so there would be a Security Council, an Economic and Social Council, and a Human Rights Council, and these would have a certain significance: security, development, human rights, the three pillars of the UN.

What that Human Rights Council came to look like and how it came to be created became a subject of intense negotiations. But in that process a number of states decided that the most important thing that they could do was to de-politicize the Commission's atmosphere, and they thought the way to do this would be to professionalize it with a process that didn't rely on an annual resolution, but that instead relied on what they then called peer review. Peer review is usually conducted by peers and it is not uncommon in international organizations. The World Trade Organization, the Organisation for Economic Co-operation and Development, a variety of other international organizations, the Organization of African Unity, all have peer review procedures.

The idea was that this peer review would be universal, that every state would be reviewed, and would be reviewed by their peers, and that it would provide accountability, it would provide transparency, it would not be selective—the claim that only a few countries were being singled out wouldn't take place—and that it would actually help assess human rights, and that there would be followup. The intensive peer review procedures that do take place in other international bodies have followed that formula.

The problem is that in the negotiations to create a human rights peer review in the United Nations, everything was up for grabs. So there was an intense effort to simplify it. Instead of restoring credibility, professionalism, and fair scrutiny to the main UN Human Rights body, which was the original concept, it seemed at times that this procedure was going to be toothless.

And, in fact, the initial review procedures on other countries consisted of so many states getting up and complimenting countries for their adherence to human rights, or their promises to adhere to human rights, that some of us in the nongovernmental organization [NGO] community began to call it not the Universal Periodic Review, but the Universal Praising Review.

Now, the change in the word from “peer review” to “periodic review” clearly had as much to do with the bad English of the members of the negotiation groups as it did with the idea of moving away from having peers review peers. One of the big controversies over this process was whether, in fact, it would be an expert body or a body where countries examine other countries. It's gone in the direction of countries examining other countries because there's a parallel process in all of the UN Human Rights treaty bodies, whereby independent experts examine states on their human rights performance.

The Universal Periodic Review that is scheduled for China is scheduled in a way that I believe shows that there is life, and there is human rights after the Olympics. The Olympics were scheduled to open on August 8, 2008, and the periodic review of China is taking place on February 9, 2009, at 9 a.m., so perhaps this sequence is deliberate, going from the 8s to the 9s, and I'm looking for somebody to tell me the significance of that in Chinese orthography.

In any event, the way the process works, is that there are three documents that a State presents. First, a State presents its own report, or anything else it wants to hand in, as an indication of what it has done. Second, the United Nations Secretariat, in the High Commissioner's Office, prepares a summary of what the UN proce-

dures do and have said about that country, what the treaty bodies have said, what the special rapporteurs have said, and other UN bodies have said and recommended.

And then, finally, the Secretariat summarizes the information it received from stakeholders—stakeholders are NGOs and anyone else appropriate. The original documentation that is sent in by NGOs is posted on the Web site. It's an extraordinary source of transparency.

The State's representatives come in for an interactive dialogue and it takes three hours, so it will be from 9 a.m. to 12 noon on the 9th of February. The government speaks for half an hour, the States ask questions. If you're a member State you get three minutes, if you're not a member State you get two minutes, and then the government concerned can respond, but cannot speak for more than a total of an hour in the whole three-hour period.

After this, the States can then make recommendations. There's a working group. It negotiates recommendations. No one has seen the negotiations, which are not transparent. The recommendations have to have the approval of the government. The State's representatives have to say "yes, I accept that" or "I don't accept that," and then the whole thing gets adopted—usually unanimously by the UN Human Rights Council.

There have been 48 of these reviews to date. There will be 192 by 2011. China is up for review now because it was a member of the council, and the members were supposed to come first, more or less. Like everything else in the UN, it was more or less. What I would say is, we're not quite sure whether this procedure is a foundation for the future or whether it's a battle station. One NGO has asked if this is building foundations or trenches? We're not sure. The point is, it's very much at a beginning.

We have some lessons from the early stages of this procedure with other countries, and I'll give you a really quick rundown of what that has amounted to. China engages all of the other countries. It asks questions. The questions are almost always about economic and social rights, women's rights, or children's rights.

Now and then they'll raise some other question. There have not, however, been recommendations, by and large, that are attributed to China, but China does ask questions. A question can be as minimalist as, "Oh, I see that you've promised to ratify a treaty. What are you doing about it?" Questions come in all shapes and sizes. I think that the prospects in this universal review will depend on the quality of the questions. The documentation is good.

What needs to be done at this point in time, is that States have to be convinced to ask serious questions. Because they are government representatives standing up and asking the questions, they have to have authority and approval from their home governments. This requires a lot of advance planning. I'm glad the CECC is looking into this question in terms of the United States. The United States has been active in this aspect of the Human Rights Council, unlike other areas.

Thank you.

Ms. OLDHAM-MOORE. Thank you, Ms. Gaer, for providing us a guide through this process.

Professor Feinerman, please.

**STATEMENT OF JAMES V. FEINERMAN, PROFESSOR OF ASIAN
LEGAL STUDIES, GEORGETOWN UNIVERSITY LAW CENTER,
CO-DIRECTOR, ASIAN LAW AND POLICY STUDIES PROGRAM**

Mr. FEINERMAN. Well, I'm grateful to Felice, particularly for providing that overview of the Universal Periodic Review [UPR] process, because I can go then into deep background and some of the history as far as China is concerned, which is, I think, the role I can best serve on this panel.

I have tried to divide my remarks up in four parts: a few prefatory remarks, some discussion of the practice of the last 20 years or so before the UPR, then switch quickly to China and the UPR process and what we might expect in the future, and conclude.

But I just want to make a comment at the very beginning about the importance of the "universal" part of the UPR. We already heard about the "periodic" as opposed to "praise" part of the UPR. I think that a significant development—and this is important in what I'm going to say about China's practice up until the last couple of years or so since the unfortunate events of June 1989 in and around Tiananmen Square—is that China has finally come to accept the idea that there are universal human rights and to use the discourse of international human rights in a way that was not anticipated before, say, 1991 or so.

I think that it's important that China now feels that there is this universal system that it's a part of too, and it can't go back to the old rhetoric of claiming that these are Western ideas, that the idea of human rights isn't genuinely global or universal, or that it's something that people outside of the formative factions that created the UN Declaration of Human Rights in the late 1940s can stand aside from and claim isn't really of their creation.

Even then, I'm reminded of Ghandi's famous quip, when he was asked about Western civilization. He said he thought it would be a good idea. The implication was that Westerners believe themselves already to be uniquely civilized, and the rest of the world had to come along. China and the rest of the world have come along with regard to international human rights, and that's important.

But very quickly, to give you my prefatory remarks, I have divided China's experience in the UN into three periods. China—the People's Republic of China [PRC], that is—after all, resumed the China seat in 1971. For the first 20 years of the last 40 years, it was pretty much a non-participant in the international human rights discourse, in the human rights institutions of the UN. It began to take more of a role after 1980, as China became more of a participant in the international community generally.

But I think it really was the shock of being censured by various UN-related bodies that had a human rights mandate after Tiananmen in 1990 and 1991 that somewhat shocked China into realizing that it wasn't going to be able to rely on the old shibboleths—that this was unwarranted interference in China's internal affairs—and that there were consequences, some of them quite embarrassing and problematic, for the PRC Government in not playing on the human rights field. So, it began to participate.

Some might say that this is not necessarily a good thing. It also has some bad aspects in that, as a more involved participant,

China wants to be part of the making of the standards and the rules. As, I think Felice Gaer has already suggested, it can be part of a large coalition that waters them down and makes them less powerful, less meaningful for the global community than they would be if countries that were somewhat more committed to the ideal standards of human rights were left alone to develop the standards on their own.

But it's the trade-off for having China as a full participant, along with other countries that have had human rights problems in their past, to get them into the tent, and I think it's worth the bargain.

So for the last 20 years or so, I think that China has been a participant. It's important because, to move on to that area, I think it's significant to note that China has been involved in both responding to criticisms of Chinese practices in the human rights area. There's a very useful book that is now unfortunately about 10 years old, but still one of the best things on China's human rights diplomacy in the UN by Ann Kent, that talks particularly about China's stance with regard to things like the Convention Against Torture, where—shades of the Bush Administration—it is basically argued that there is a question of definition about “torture.”

What it is claimed that China is doing, what NGOs especially claim that the Chinese are doing is torture, doesn't fit the definition of “torture,” at least as it exists in the Chinese criminal code, and therefore China can't be held up for violating that standard.

This is true as well with the International Labor Organization [ILO] and international labor standards, where it's somewhat embarrassing for China claiming to be a Socialist country with a Communist Party that's the vanguard of the proletariat for the largest population in the world, for China to be targeted as violating fundamental standards of international labor rights and being censured by the ILO and some related international labor rights bodies.

I think what Ann Kent's study proved, and this still tends to be Chinese practice up to today, is that China has learned to play the game. It's learned to criticize in the forms of the standard discourse. But on the other hand, it hasn't really internalized the standards that most would agree are the spirit behind these international agreements.

It is engaging somewhat in a kind of persiflage, where it argues about what the definition of torture is, whether or not these labor right standards are in fact universal, whether there are other elements of China's economic, cultural, and social rights which better protect the interests of workers than the standards that are proposed by those who are reading more carefully the international labor rights documents.

So to get us up to the UPR and what it promises for China, I guess there are three questions that I would ask us to think about. One, is whether the Human Rights Council, as it's now constituted and transformed from the previous Commission and Subcommission on Human Rights, is genuinely an improvement and promises to do better than the old system did in the United Nations. As I've already indicated, I rather like it on the score of universality.

But I think that the experience of countries, going back to almost the founding days of the United Nations, who were able to twist

the standards of human rights and use, for example, the United States' non-signature of various international human rights standards against us. Where we would say that we were just taking seriously the implications of implementation and compliance if we actually did accede to these agreements, the former Soviet Union, for example, was perfectly happy to sign them all and then tweak the United States for not having signed the documents that it was itself honoring in the breach.

So, we need to think about whether this is going to make a significant difference, a genuine improvement in the enjoyment of human rights as opposed to just a lot of legal hair-splitting as to whether or not we've signed an agreement and whether the agreement is being properly implemented under the standards that most people would recognize.

I think also we need to worry about this question of peer review and what other nations perceive as their peers. It's interesting that China, which has done a review already of India, pulled its punches with regard to its closest peer, at least in terms of population, complexity, and a series of human rights issues that are on the table there, partly out of a sense that there's a kind of honor among thieves, and that we'll do this for you and you'll do that for us, and this is the standard that we can now expect in this process of peer review.

It may be that not only China, but the United States and other major countries really see themselves as having no peers that can effectively criticize them, no matter what they or this UPR process produces. I'm reminded that when I was an undergraduate at Yale then-President Kingman Brewster was asked by a news commentator about his peers in Cambridge, and he seemed to ignore the question. So the questioner pressed him again and said, "Your peers in Cambridge, President Brewster?" And he looked at him and said, "We have no peers in Cambridge," which may show a kind of Ivy-League hauteur. But I think that there are implications as well in the international community for powerful nations that really feel they have no peers, at least no peers that could meaningfully do anything to them or sanction them.

Finally, I would just worry about—and I know that Felice and her counterparts are in the forefront of this—the real ability of NGOs, as opposed to governments, to have a serious impact on the process. I'm a big fan of what they do, and I think it's absolutely necessary to get the information out and to have it be as transparent as it is in this new process.

But ultimately we want to be able to do something. We want to be able to have an impact on the actual enjoyment of human rights on the ground. I have no magic wand; I don't believe the NGOs have been able to produce one either. The meaningfulness even of government-to-government sanctions seemed to be fairly limited, if we just look at the United States' own experience in trying to bring other nations into line on human rights. So, I'm worried.

The last thing I would mention before I conclude is that I think it's also worth noting, and I published a recent op-ed piece in the Washington Post which I think is going to be provided as part of the material for this hearing, that says that in the last four or five years, one of the things that I think needs to be noted in this proc-

ess is a real retrogression in the enjoyment of human rights in China.

I've been coming here to the Hill now for almost 20 years, since the early 1990s, and in hearing after hearing, saying that even though there are still problems with human rights in China, the major fact that we need to take note of—and give the Chinese Government some credit for—is that more people in China enjoy more human rights than they have at any time previously in Chinese history.

I think since about 2002 or 2003, that's not true any more. I'd actually key it somewhat to the accession of Hu Jintao and Wen Jiabao and the transition from the Jiang Zemin and the Zhu Rongji regime previously. I think that it's something that really is quite shocking, if we look at what's happened to legal defenders, for example—and I mean not only lawyers, but other people who are trying to protect the individual rights of Chinese citizens. I think it's shocking, if you look at what's happened in the area of religious freedom, which I know is a big concern to members of this panel. I think it's shocking as well in terms of the bald-facedness with which China is willing to stand up and announce that it is doing these things, and what can the rest of the world do about it?

There is a story just in today's New York Times about the punishment of someone who was trying to make a protest during the Olympics, and the dire consequences that he suffered in following the rules that the Chinese Government itself set down for doing a legitimate government-sanctioned protest during the Olympics. If you can't even play by the rules and hope to escape punishment, it suggests that things have seriously deteriorated.

So in conclusion, I would say that I really want to worry a bit more about what the process is going to provide at the end of it. I agree that it's important to do it. I'm glad that it promises a greater universality and that China is going to be an early participant in both ways in the process, as an object of study and as a participant in the studies of other nations.

But I think that we want to keep our eye on the ball and see what it actually does in terms of enhancing the enjoyment of human rights in China, which had been proceeding apace pretty well, or as well as could be expected, for decades, up until the last few years.

Ms. OLDHAM-MOORE. Thank you, Professor Feinerman, for those insightful remarks.

Now we're going to turn to Ms. Xiaorong Li, please.

STATEMENT OF XIAORONG LI, SENIOR RESEARCHER, INSTITUTE FOR PHILOSOPHY AND PUBLIC POLICY, UNIVERSITY OF MARYLAND

Ms. LI. Thank you for this opportunity to address issues related to the upcoming UN Human Rights Council's [HRC] Universal Periodical Review [UPR] on China. As the previous speaker, Ms. Gaer, has expertly described, the UPR is a brand new, thus very little known UN human rights tool. For an organization like the UN, the establishment of UPR is remarkable. Only a few years ago, it would have been unimaginable to put China under international spotlight to scrutinize its human rights record in a comprehensive

manner. Since 1989, almost every year, China had successfully blocked any vote on motions at the now-demised UN Human Rights Commission to put on its agenda to examine China's human rights behavior! This once seemingly insurmountable hurdle now suddenly vanished!

However, UPR can be abused by UN member states, especially those who are unfriendly to human rights and the process can be highly politicized, its effectiveness minimized. The UN is an inter-governmental organization, where member states lobby, bargain, and position themselves to advance their own national interest. China in particular has demonstrated its skillfulness to mount impressive efforts to lobby its "friendly" countries at UN venues.

Some common tactics that member states have used to undermine UPR in order to prevent a critical report on their performance are: (1) using "national human rights institutions" and government-organized "non-government organizations" [GONGOs] to submit rosy reports to dilute the 10-page compilation by the Office of the High Commissioner for Human Rights [OHCHR] of stakeholders' submissions; (2) filling the 3-hour "interactive dialogue" with praises or irrelevant remarks by delegations from "friendly" countries; (3) using the opportunity for state party response to dismiss critical questions or independent NGO submissions as "slandering" or "fabrications."

So why does China bother to buy into UPR or become a member of the HRC? That is a much larger question than I could address here. There are some interesting hypotheses on the table: (1) China wants to be treated as a member in good standing in the international community; China could not have opposed UPR while keeping a straight face because, when China rebutted critics of its human rights, it has accused them to be "selectively targeting China" or "politicizing human rights"; UPR applies to all countries. If you look at China's National Report, it refers to its own position on human rights as based on "equal respect," "fairness," "objectivity, non-selectiveness"; (2) UPR has been structured in such a way that the pain for a state to undergo it is minimized, a point that I will come back to soon.

China's own "National Report" to the UPR Working Group is a typical affair. It follows a pattern, as we have seen in China's reports to the Committee Against Torture or the Committee on Economic, Social, Cultural Rights, by presenting a positive assessment of its "great progress," reiterating its commitment to promoting human rights, and highlighting legislative and regulatory steps, while glossing over ongoing violations and omitting the fact that many good-sounding laws are impossible to implement and officials who failed to implement them face little consequence.

One way to reduce UPR's vulnerability to politicization and abuse is to facilitate active participation of civil society, or NGOs. One remarkable thing about UPR is its built-in openness, no matter how limited, for civil society intervention. To sufficiently explore the opportunity is the only way available to make UPR have any impact. So when the schedule to review China was set, the UPR Working Group called for NGO submissions last summer. Forty-six "stakeholders"—national human rights institutions and supposedly NGOs—submitted reports, each restricted to five pages.

The UN OHCHR has compiled a file summarizing “credible and reliable” information from stakeholder’s submissions.

Other than national human rights institutions, there are at least three types of organizations on the list: International NGOs, including Chinese, Tibet, and Falun Gong groups overseas, Chinese—including Hong Kong—NGOs, and GONGOs. Two things are interesting: (1) Most of the groups from China are GONGOs, with few exceptions. The GONGO reports generally present “progress” and recommend legislations that are already being drafted or proposed. (2) Groups that working on children, women, migrants, or HIV/AIDS did make submissions. Yes, there is no independent human rights NGOs like Amnesty International or Human Rights Watch from the mainland who made submissions, though some loose networks of activists/dissidents participated in the submissions with international groups.

The missing of Chinese domestic, openly operating, or “legally registered” human rights NGOs has to do with restrictive regulations and official crackdowns on independent NGOs.

So we can be almost certain, no mainland Chinese human rights activist will attend the UPR session in Geneva in February, even though they might be invited to go by international NGOs. There is the risk factor: fear of being intercepted on the way out or retaliated against going back—one activist was recently interrogated several times, his home was raided and personal belongings confiscated. The policemen said they acted on the order from above to do anything to stop anyone from preparing a human rights report for the UPR. But additionally, there are also obstacles such as travel costs, and UN Economic and Social Council [ECOSOC] accreditation, even for any legally registered groups.

Ironically, problems such as restriction on freedom of association, assembly, and speech, which the UPR is intended to examine and, hopefully, find solutions, play a key role in undermining UPR, diminishing its impact.

Another way to make UPR work is that human rights-friendly member states should actively participate. The three-hour “interactive dialogue” on February 9—from 9 a.m. to 12 noon—is open to all 192 countries—for example, the United States is not an HRC member, but can participate. The February 11 session is when the record of the State reviews are considered, which lasts for 30 minutes—12–12:30—where China can respond or reject some recommendations. Then, there is an HRC plenary session several months later where the report is adopted. Only NGOs with ECOSOC accreditation can attend these sessions and can make statements only in the HRC session.

It is important to get into the final report of the UPR working group a concrete list of substantive recommendations with measurable results. This document will go in the record as a testimony to China’s delivery after it has made pledges to promote human rights and signed numerous treaties, covenants, and declarations on protecting human rights. All stakeholders in the next four years can refer to this document as a yardstick to measure any progress China may or may not make. China will be in an awkward position to denounce such a document as “interference in its internal affairs” by “anti-China forces” with “ulterior motivations”—because

China has gone through the process and participated in setting the rules and in reviews of other state parties. It can't quite dismiss the process as "selective" or "unfair."

What could the U.S. delegation or any other human rights-friendly countries do in the UPR process? The United States is not a member of HRC, but has observer's status.

They can prepare one good question about an area of serious rights abuses and make one substantive but feasible recommendation.

For instance, given the importance of free speech as a fundamental human right, the U.S. permanent delegation could ask the question about the detention and harassment of signatories of Charter 08, who merely exercised their freedom of expression by endorsing a declaration on human rights and democracy. Ask for the release of detained signatory writer/intellectual Liu Xiaobo on suspicion of "inciting subversion against the state," which is a crime frequently used in China to persecute free speech.

The U.S. delegation could recommend that China release Liu Xiaobo, and, for the longterm protection of free expression, to clarify and precisely define the meaning of the terms "incitement," "subversion," and "state power" in Article 105(2) of the Chinese Criminal Code as well as the specific conditions under which a peaceful act of expression may constitute "inciting subversion against state power." Such conditions must explicitly exclude any non-violent activity in the exercise of the right to freedom of expression, including expressions critical of political parties and government authorities.

In connection to this last point, I should mention that I'd like to submit the English translation of Charter 08 by Perry Link that appeared in New York Review of Books for the record.

Thank you.

Ms. OLDHAM-MOORE. Thank you. We will include the translation into the official transcript. And thank you so much for your remarks.

Ms. Bork, please begin.

[The Charter 08 translation appears in the appendix.]

**STATEMENT OF ELLEN BORK, SENIOR PROGRAM MANAGER,
FREEDOM HOUSE**

Ms. BORK. Hello, everybody. I'm glad that Xiaorong finished her remarks by mentioning Charter 08, which I'm going to develop further for discussion with all of you.

But, first, I just want to mention Freedom House's position in general on the UPR, which for very much the same detailed and substantive reasons that my colleagues have given here, is a very mixed one. We are generally supportive of engaging in the process, and view it as not inherently flawed, but lacking real political commitment from countries that could make it more meaningful.

In this connection also, Freedom House is on the verge of releasing its annual Freedom in the World survey. You won't be surprised to find out that China does not come out very well in that survey of civil and political rights. In the preview that's been released, Freedom House notes that of all the people in the world who are assessed as being not free, half of them live in China.

In the past year's review, special note is taken of the crackdown on Internet journalists and bloggers, restrictions on lawyers, the arrests of various dissidents, including Hu Jia, the crackdown in Tibet, and also Charter 08, which came at the very end of the year, and which ought to be viewed as a very positive development that the democratic world can respond to.

I was invited to join this discussion because I have been interested very much not only in Chinese dissidents, but also the inspiration Charter 08 drew from Charter 77, the dissident initiative in the former Czechoslovakia.

As Xiaorong mentioned, Perry Link translated it in the New York Review of Books. In his preface, he noted that through his acquaintanceship with many Charter 08 signers, he was aware of their "conscious admiration" for Charter 77. In fact, you may have seen that within several days of Charter 08's publication, Vaclav Havel himself, one of the founders of Charter 77, published an article in the Wall Street Journal, acknowledging this connection and seeking to mobilize support for Charter 08.

This issue of the relationship between Chinese dissent and dissent under the former Soviet Union, and the influence each has had ought to be developed thoroughly as it holds a lot of useful lessons.

For example, I think you are all aware that Fang Lizhi is known as the "Chinese Sakharov." These echoes are very important, not least because so many Americans look at Soviet dissent as the model of dissent. Also, the American response to Soviet dissent shapes our views of what governments can do, and also I would say what non-governmental actors can do.

Looking back at that era as a sort of model, it's easy to forget that it wasn't always so clear that the United States would lead other free countries in support of Soviet dissidents.

In fact, the Helsinki Accords, which we often look at as a great lever, were not intended to impose or encourage human rights standards. The Accords themselves were designed to confirm the Soviet Union's post-war borders. The human rights components were something of an afterthought. In fact, it was several European countries that made a nuisance of themselves and insisted on the so-called "third basket" of human rights provisions. American leadership at the time was not especially open to this, that is Secretary of State Henry Kissinger and President Ford himself. Although I think I recall that President Ford later thanked people for forcing him into accepting these as a condition of the Accords and approving, ultimately, the establishment of the U.S. Helsinki Commission.

So the United States, as a government, was not the first or the staunchest source of support for using the Helsinki Accords or for pressuring the Soviet Union and Soviet bloc countries on human rights.

Instead, the strongest leadership in this regard came from private and independent people, like Jeri Laber at Helsinki Watch, and Lane Kirkland, head of the AFL-CIO who led the labor movement in playing such a vital role in supporting the Solidarity trade union movement. When official U.S. support was not forthcoming,

Kirkland pushed ahead himself and led the labor movement to provide support.

Many of us here today are part of a community that intends to bring about just such pressure on China to make progress on human rights. Yet we don't see, frankly, the fruit of our efforts in the way we'd like. So I've come to the conclusion really, and I think it's a fairly obvious one, that there is something else that has to change in the way China is viewed and treated in foreign policy. Again, my colleagues here, we all certainly have a view that the UPR and other mechanisms should lead to these things, but the question remains why they don't.

At this late date, our official concept of the way China should evolve is based on the notion of "engagement" and the belief in inevitable progress through economic development, top-down reform, and the belief that Chinese leaders will come to see reform as in their interests. Here again, the Soviet era provides a lesson and a model. Although U.S. policy toward the Soviet Union moved from one of détente to one that viewed the Soviet Communism as untenable, in China same thing has not happened.

Ms. OLDHAM-MOORE. The first question will be offered by Andrea Worden, who is our General Counsel at the Commission, and Senior Advisor on criminal justice issues.

Ms. WORDEN. I'm Andrea Worden, General Counsel of the CECC. The question I would like to ask is directed to Ms. Gaer.

Ms. Gaer, you are the vice chair of the UN Committee Against Torture. In November of last year, the committee reviewed China's compliance with the Convention Against Torture. Based on your recent experience with the Chinese Government during that review, what should we expect from China during the upcoming Universal Periodic Review?

Ms. GAER. What an interesting question. The government of China participated fully in the review of the Committee Against Torture [CAT]. We provided a list of questions initially, to which they responded. We asked a lot of points of law and questions of fact, particularly raising a lot of specific cases, on the assumption that cases are what tells you whether the law works. We received a lot of information about the law.

Unfortunately, we were told nothing different than what has been reported in the media about the cases. We raised three overarching issues from the beginning. We have an oral question-and-answer process as well, and we raised some questions about how the State Secrets Act had influenced the information we were given, because we were given so little information on so many important questions that we asked. We were never told that the reason was the State Secrets Act, but we were trying to see if perhaps that was or was not the reason. We concluded that that was a problem.

But we got full responses, and we got a great deal of courtesy. China brought a large delegation, headed by a high official and representatives of a wide range of Chinese Government bodies. That same pattern is what you will see at the UPR. All the countries that have been examined at the UPR so far have come in with reports on time, they've come in with prominent heads of delegations, often ministers, and with sizable delegations. No one has re-

quested a delay of the review. So you'll see them at the UPR, on time, and they will respond as expected.

Now, what also happened was that we also got responses. But again, some of those responses were less than we would have liked. When we asked for information about what had happened in Tibet—I personally gave the head of the delegation an NGO list of an alleged 800 persons who are missing—he promised to get information for us. It never came. We asked a second time, but although he promised, it never came. We produced our conclusions without it.

We concluded that information was a big part of the problem but we did not hesitate to draw attention to cases. We thought that that was perhaps the best way to ensure that the process has some followup, because that's the best way to see what happens.

So, at the UPR there will be a high-level group. They will follow all the procedures that Jim Feinerman talked about, and the only question is whether it will provide any new information on important cases or not. In the end, when we got an oral response on Tibet from the government, it was the local official responsible for Minority Affairs who made a response. It was a strident response, not a helpful response. It had a lot of those words that are so familiar from the media.

Similarly, I asked a lot of questions. Article 3 of the Torture Convention deals with non-refoulement, non-return to torture. Anybody who faces a risk of torture is not to be returned. They're to be dealt with in the country where they're being held.

I asked about North Koreans crossing into China, large numbers of whom are reported returned and subjected to torture and other forms of ill treatment. The government responded by saying there were no refugees from North Korea although there are "illegals." These were the usual explanations. But in the written response to the CAT, the government went so far as to say, and the people who deal with them are "snakeheads."

Now, this is not a term that we at the committee are familiar with or accustomed to, and I did not think that it helped the discussion. So there will be moments where there will be real engagement and there will be moments that will not reach it, and we experience both.

Ms. OLDHAM-MOORE. Thank you. Thank you very much.

Now I turn to the audience, please. Anybody who would like to ask a question? Yes. Please stand. Thank you.

Ms. STAR. I'm Penny Star with CNS News. I'm wondering, I'm trying to wrap my head around how this works and what the U.S. representatives, whether they're government or NGO, are asking about specific reforms or what they want to see done about human rights abuses in China. The two I have in mind are in the population planning, forced abortions, and also religious persecution and people who are arrested, killed, or disappear for those two things. I wondered how the United States is going to address that in this review.

Ms. OLDHAM-MOORE. Great. Thank you very much. Jim Feinerman, do you want to take a shot at that?

Mr. FEINERMAN. Well, I'll take a stab at a start. I think that these are two issues that, again, depending on the administration

here in Washington, may be addressed somewhat differently. I think certainly for the Republican administrations of the last 30 years, forced abortion has been a real flash point and something that they've been very seriously concerned about. I think it's offensive to anyone, Democratic or Republican, and a real problem of China's population planning.

But here is where you see the stock responses brought up, that this is China's way of dealing with an internal matter that China has to address before it can address any other human rights issue, and it gets back to a long-running debate about whether economic, social, and cultural rights trump civil and political rights and what China needs to address first in terms of all the human rights of the entire China polity. It gets into collective versus individual rights. I don't know how far this is going to be pressed, either by the Obama Administration or by other nations as well, who seem to be rather uncomfortable with the idea of taking this on.

As far as religious freedom is concerned, this is something that I think has greater traction and is something that a wide range of not only U.S. administrations, but foreign governments outside of China are also willing to address. The sticky issue there becomes this definition of what is "religion," for purposes of protecting religious freedom.

Of course, the Falun Gong movement is one of the prime issues there because, whether or not you characterize Falun Gong as religious practice, there's an argument that torture, illegal detention, even extra-judicial killing that's happened in some cases, can't be countenanced whether or not it's a violation of their religious freedom or just violation of other basic non-derogable human rights.

I think there the United States should be in the forefront of speaking out about it, both as a religious freedom matter, but also defending the bare minimum of those non-derogable rights that we, as a nation that professes to protect the civil and political rights of our citizens, care about them and the rest of the world, really wants to make an issue.

Ms. OLDHAM-MOORE. Yes. Thank you. A quick followup.

Ms. STAR. What did you say about taking on the subject of forced abortion? I'm not sure I—

Mr. FEINERMAN. Yes. I think that there's an argument that people who are generally pro-choice want to be careful or cautious about the issue of whether or not China's policy is coercive in that they don't want to be put in a position of seeming to oppose freedom of choice with regard to abortion by opposing something that clearly crosses the line and is a human rights violation in China, but might become a more explosive issue in the Choice versus Right to Life debate.

The Chinese, I think, have capitalized on this. They've realized that they can turn the arguments that people make about women's rights in other countries around the world with respect to a right to choice in regard to abortion against people who criticize China for something that, whether you're a proponent of Right to Life or Right to Choice, clearly seems to me to be irrespective of your views about abortion, of course of violation of human rights.

Ms. OLDHAM-MOORE. Okay. Thank you.

Next question. Dr. Brettell?

Ms. BRETTELL. My question relates to—I have several questions, actually.

Ms. OLDHAM-MOORE. One question.

Ms. BRETTELL. One question?

Ms. OLDHAM-MOORE. One question.

Ms. BRETTELL. Oh, gosh. Okay. Has the official Chinese definition of torture changed over time and as a result of interaction with the international human rights community?

Ms. GAER. Well, I would say that the definition has changed little, but there is a recognition of torture and ill treatment. There's a lot of activity that's been carried out by the Chinese Government to criminalize torture and to train officials in the prohibition, because of the publicity that it has garnered inside and outside the country. In that context, the Committee Against Torture has continued to draw attention to the fact that the official Chinese definition does not meet the UN definition, that it's still about confession and coercion in detention only.

So if you're on the way to detention, and things that have happened in Tibet and so forth may not fall within that definition, and in that context, if I may take the opportunity just to comment on Professor Feinerman's remarks, I am fiercely pro-choice and I have never hesitated to bring up the issue of the violence and coercion associated with China's population policy.

You will see that issue, articulated in that way, has been raised by the UN Committee on the Elimination of Discrimination Against Women, by the Committee Against Torture in 2000 when I was first a member, by the Committee Against Torture last November. Again, it falls elsewhere. It's not a problem.

Ms. BRETTELL. Is it clear we'll see it as—

Ms. GAER. The violence and the coercion associated with it establish it not only as a human rights violation, but it would fit into definitions of torture.

Ms. OLDHAM-MOORE. Okay.

Xiaorong, did you want to comment on this?

Ms. LI. On the abortion issue, I can also say myself, I am fiercely pro-Choice. But I've been comfortable to speak up against forced abortion in China and have written a Law Review article called "License To Coerce," which is precisely about this issue.

About the definition of torture, China has come a long way, as Felice and Jim pointed out. There are two problems with China's definition of torture. One, is a restriction of "torture" to physical assault and mistreatment, but a lot of torture going on in China is not active assault or only mental or psychological.

For example, exposed to cold for long periods of time, turning on the air conditioning in full blasts, and also making somebody sit on a very short, low stool for very long hours at a time. Also, the use of threats, intimidation, saying if you continue with this or that activity your family members might suffer, or you might lose your job. Also, police use the threat of violence against you or your family by unidentified/plain-clothed men.

The other limitation is to restrict "torture" to acts of torture committed by law enforcement officers or prison guards, with a narrow focus on officials in the criminal system. But there's this broad range of government officials who are involved in the use of vio-

lence and torture, for example, city management officials [*chengguan*], or CCP party functionaries who lock up and beat up their own members for “corruption” or committing other wrongs in official facilities [*shuang gui*] or government officials in charge of receiving complaint letters and visitors [*xin fang* department officials].

Ms. OLDHAM-MOORE. Jim, you wanted to add something?

Mr. FEINERMAN. Yes. A point about torture, since I brought it up in my own remarks. I think that I want to underscore the point that Xiaorong was just making, that the definition that’s contained in China’s criminal law, and there are really only two provisions of the criminal law that address this, pretty clearly limit the Chinese idea of torture solely to physical punishment that takes place when people are detained in the official criminal process. So the list leaves out a wide range of things. It leaves out everything that isn’t specifically physical torture. Any kind of mental torture that doesn’t have a physical manifestation is not contained in the Chinese definition of torture.

More important, this limitation to those who are being criminally detained in the official process means that people who are subject, for example, to police detention outside of the formal criminal process aren’t covered by the definition that’s in the formal criminal law.

As I think the last few remarks Xiaorong was making made abundantly clear, this is something that happens more often than not. It’s a very tiny minority. It’s the molehill, the tip of the iceberg of the cases that are actually in the formal criminal process. The vast majority of things happen outside their formal criminal process, and there the gloves are off. There, there are no limits on the kind of activities that can be carried out. You won’t be criminally prosecuted. You won’t have violated China’s criminal law in those cases.

Ms. OLDHAM-MOORE. Thank you.

Anybody from the audience, question? Yes. Lawrence, please. Lawrence Liu.

Mr. LIU. Yes. I wanted to ask about, you mentioned a followup on that portion of the UPR. I understand that states can make recommendations and the state under review can undertake voluntary commitments. I’m just wondering, to the extent that those can be used as levers for followup in ensuring that progress is made with human rights and the particular State under review, do those have teeth? What have been recommendations? What have been some of the commitments?

Ms. OLDHAM-MOORE. Thank you. Good question.

Ms. GAER. Well, the simple answer is, nothing in this process has teeth. It was designed as a peer review process, without any enforcement capacity. Now, that’s true of the entire human rights business in the United Nations. Regarding the instruments and the treaties and the other things, there are no enforcement mechanisms that have teeth, that can be enforced. I suppose if you go to the Security Council and you get a criminal court established or something, then you will have enforcement power.

But short of that, it doesn’t exist, and it doesn’t exist in the human rights area. So what kind of followup takes place? You

build a web of commitment, you build the embarrassment of public exposure, the public exposure in the “club” of the peers. You have to participate. You can’t just walk out. You want to show, as Jim Feinerman was saying, that you respect the rights and you accept the rights.

But the problem with the UPR process is, because it includes everything in the Charter, the Universal Declaration, treaties signed, commitments made voluntarily, including at international conferences, a review of any given country can be completely selective about what issues it deals with.

In the UPR, you can pick the most benign issues or the most severe issues—it’s usually the most benign—reach conclusions, and then there’s no enforcement. There will be a review in some years, if the Council continues to exist, if it continues this procedure, and if the procedure gets stronger. It has already gotten stronger from the first to the third session in terms of the quality of questioning and the planning by governments.

I think if we look at all UN bodies, you find that same trajectory. The improvement will depend on NGOs and the input and the preparation, in this case, that governments give to it, and if they then have a means of holding governments to these extended and vague recommendations that are made, it would be quite remarkable.

Ms. OLDHAM-MOORE. Thank you.

Question from a woman in the back, please. Yes, please begin.

Ms. COUPLE. Virginia Couple, Albert Shanker Institute. About a year ago, we did a Chinese — in the report — this law — participate.

Ms. OLDHAM-MOORE. Did everybody hear?

Mr. FEINERMAN. I follow this a little bit. Since I brought up the ILO and China’s participation in that, I should probably begin addressing this question, but I welcome other comments that my fellow panelists may have. I think that China is going to say that the Chinese labor system is already the best of all possible worlds, and that it’s only been made stronger.

To use the model of the Cultural Revolution, the situation is excellent and constantly improving with regard to the enjoyment of labor rights in China. Of course, that’s not true. In fact, I think that in the current economic climate, actually in things that have been going on in the Chinese economy for the last decade or more with the evolution of a market economy from a state command economy, workers experience a lot of day-to-day problems that the new labor law hasn’t addressed and that the Chinese leadership wants to sweep under the rug.

If you just take note of the last count, approximately 85,000 protests annually, some of which are quite small but some of which are quite large in number, the larger ones tend to be the ones that involve violations of labor rights—everything from unpaid wages, especially companies that are now going out of business, where the Hong Kong or Taiwan investor just skips the country, literally, and closes down the factory, to situations where people are given paper IOUs instead of cash month after month, sometimes year after year, but still expected to work in almost slave labor-like conditions. This is something that I think needs to be brought up by the

international monitors of global labor rights, but I'm not so sure how much the Chinese Government is going to take that or respond to it.

The one last thing that I would mention in regard to the labor rights question is that, as I mentioned in my opening remarks, China is very sensitive about this. It just won't do for China to be seen as falling down on the job as far as labor rights are concerned. But the arguments have mostly been those of denial and resistance rather than any promises to reform. If you just look back to what happened in and around Tiananmen Square, for example, in 1989, the hagiography of that era is that the valiant students were standing up to the government, which mowed them down.

But I think—and I said so at the time and shortly afterward—what really got the government to exercise the most violent force was when Workers Autonomous Federations started organizing. They were much more worried. Twenty-two year-olds at Peking University have been making trouble since the early 1900s, and that's something that they just take as a kind of rite of spring. What really got the leadership worried was that when those workers groups started mobilizing, first in Beijing, later in Shanghai and other places, and threatened to really bring down the system and completely undercut the legitimacy of the Communist Party claiming to be the vanguard of the proletariat, that's when the government called out the troops.

Ms. OLDHAM-MOORE. Thank you, Jim.

Doug Grob, you had a question?

Mr. GROB. Thank you. First, I'd like to ask our panelists to comment on the role of the press in this process, and the potential pitfalls and hazards of covering the issue. Second, what should the new administration, and European and other foreign governments as well, say or do to leverage fully the effectiveness of this process? Ellen, if you could speak on that first. Thank you.

Ms. BORK. I think the main problem is taking—how do I put this—the willingness to exact consequences for abuses. Any particular process may have flaws or may face a certain kind of resistance from the Chinese leadership. What's lacking is a kind of sense that this is all leading to something. There's a very important role for the press to play.

Again, sort of playing back on my analogy to the earlier era, reading accounts of Helsinki Review Commission meetings, it's quite extraordinary how consequential these were. At the time no one thought the Soviets were going to immediately react and agree, but they became a focal point for real pressure and real expectations. I don't think at this stage we have those expectations for China. I can only hope that that begins to change, that this and other things like it become less of an empty exercise in the engagement process. So the best thing that could happen for a new administration would be a kind of a shift in the view of China and the way it will reform, which I think at the moment is really very stale, very—what's the word? Inert.

Ms. OLDHAM-MOORE. Thank you.

Any other questions from the audience? Anybody? [No response]. Steve Marshall, please.

Mr. MARSHALL. I'm Steve Marshall and I cover Tibetan issues for the CECC. I'd like to address a question to Xiaorong Li and Ellen Bork. Article 18 of the Charter is titled, "A Federated Republic." In the text, it endorses democracy and specifically mentions Taiwan, Hong Kong, and Macao. The article also brings up ethnic issues and says, "We should approach disputes in the national-minority areas of China with an open mind, seeking ways to find a workable framework within which all ethnic and religious groups can flourish." This seems to be a fairly obvious reference to Tibetans and Uyghurs, but the Charter doesn't mention them by name anywhere. What are your thoughts on this? Would mentioning the issues specifically have been too detailed to suit the Charter's broader, more sweeping focus? Or, in the view of the drafters, in Chinese eyes, could these issues have been too sensitive, too divisive among Chinese people to bring up, but advocating for democracy and redrafting the Constitution were not? Thank you.

Ms. LI. Well, nobody can speak for the mind of Charter 08 signatories. Just from the observer's point of view, proposal No. 19 in Charter 08 is one of the most contentious proposals. There is an unconfirmed report on the Internet that President Hu Jintao actually made some comments on this proposal, expressing worries about its "separatist" overtone. This worry could have been behind all the heightened police crackdowns on Charter 08 signatories. I think, from what I gather, the thinking behind not mentioning Tibet, Uyghur, or Taiwan specifically was a strategic consideration—not to be too confrontational or provocative. The idea was to allow different regions to develop and democratize and then negotiate on the basis of mutual respect some kind of federal government that allows regional differences. In the proposal about religious freedom, there is also a reference to "non-government religion" instead of mentioning Falun Gong. This is also a compromise. The drafters want to seek endorsement from as broad a range of people as possible, and those compromises on terminology, I think, are deliberate.

What you get is a text that strikes a very moderate tone of voice, uses a very calm voice, and speaks with graceful language in Chinese. The views are rationally reasoned. I think that this explains the fact, if you look at the first batch of 303 signatories, they're from many walks of life, with a lot of very prominent and well-respected figures in the Chinese society, both outside and inside the government. It has broad appeals. It mostly reiterates what is in the Chinese Constitution, but it does make what might strike the Chinese leaders as "radical" or "sensitive" ideas. For example, there's a reference to replacing the One Party rule. These things are bound to make the authorities nervous.

Ms. OLDHAM-MOORE. Ellen, please? Just to frame it as I don't know if people in the back heard: the Charter 08 platform or language included language on ethnic minorities, and pressure is being placed right now on Charter 08 signatories to that document.

Ellen, please?

Ms. BORK. I don't have much to add to Xiaorong's careful analysis, except to be struck that even though there are compromises in language, even though there are sensitivities that were probably taken into account in the formulation and the seeking of signa-

tures, it is nevertheless moving to see the Chinese from all walks of life taking a courageous stand, and attempting to deal with such sensitive issues, particularly that relate to ethnic minorities and divisions of the country.

It reminds me also that so many of the signers of Charter 08 also signed the letter after last year's Tibetan protests urging tolerance and dialogue with the Dalai Lama. I see these sorts of efforts to deal with questions of minorities and race, as like a civil rights movement motivated by the courage to speak about things notwithstanding the consequences and notwithstanding the taboos in their society.

Ms. OLDHAM-MOORE. Thank you.

Jim, you'll have the last word.

Mr. FEINERMAN. Well, I don't know if I deserve it on this particular issue. But one thing that does strike me about Charter 08 — and I just want to commend to you Perry Link's translation. He and I have worked on a number of translation projects over the years, starting with the work of Liu Binyan, the famous journalist who wrote about China in the 1950s and the 1970s. But I think that what struck me most about this, and you can see there's either a "glass half full" or "glass half empty," is that on the one hand, Chinese intellectuals, particularly those who are not from ethnic minority backgrounds or from the areas of China that are still regarded as irredentist claims like Taiwan, have tended in the past to be remarkably resistant, despite their human rights positions on everything else, to the idea of splitting China. They've tended to almost parrot, the Communist Party line about the inseparability of the Chinese homeland territory.

I think what's really remarkable about Charter 08—this is the glass half full rather than half empty—is that even if you find that it's not everything you would have wished for as a representative, say, of the Tibetans or of Taiwan as a separate and independent country and government, it shows remarkable progress toward something that at least begins to open up the consideration of these issues in a way that was unthinkable even four or five years ago. This is one area where I think there's really been an incredibly dynamic change.

It also explains why the government reaction has been so intense. I would just ask you to remember that the dress rehearsal for Tiananmen in June 1989 happened in Tibet in March 1989. Do you know who was running Tibet in March 1989? Hu Jintao. I think that there's a direct line that connects the dots here with regard to why there's such an intense negative reaction to the things that are contained in Charter 08, including this article, which suggests just how powerful the arguments are and what the fearful response of the Chinese leadership is to the thought that other people might be taking up these ideas and seriously considering them, which it sees as one of the greatest threats, other than the criticism of the One Party system that's already been mentioned, to the continued dominance and legitimacy of Communist Party rule in the Mainland.

Ms. OLDHAM-MOORE. Thank you.

For those of you who are interested in learning more about Charter 08, please visit our Web site. We have a lot up on it. We are

actually going to close on time. Thank you, Felice Gaer, James Feinerman, Xiaorong Li, and Ellen Bork.

Before we shut down the house, I just want to let you know, February 13, in this room, we will be having a roundtable on China's western region, Xinjiang, and the impact of security measures and propaganda campaigns on human rights conditions in that region after the Olympics. So, please join us then, and thank you so much for coming today.

[Whereupon, at 11:29 a.m. the roundtable was concluded.]

A P P E N D I X

SUBMISSION FOR THE RECORD

[From the New York Review of Books, Volume 56, Number 1, January 15, 2009]

CHINA'S CHARTER 08

(Translated from the Chinese by Perry Link, submitted by Xiaorong Li)

The document below, signed by more than two thousand Chinese citizens, was conceived and written in conscious admiration of the founding of Charter 77 in Czechoslovakia, where, in January 1977, more than two hundred Czech and Slovak intellectuals formed a

loose, informal, and open association of people . . . united by the will to strive individually and collectively for respect for human and civil rights in our country and throughout the world.

The Chinese document calls not for ameliorative reform of the current political system but for an end to some of its essential features, including one-party rule, and their replacement with a system based on human rights and democracy.

The prominent citizens who have signed the document are from both outside and inside the government, and include not only well-known dissidents and intellectuals, but also middle-level officials and rural leaders. They chose December 10, the anniversary of the Universal Declaration of Human Rights, as the day on which to express their political ideas and to outline their vision of a constitutional, democratic China. They want Charter 08 to serve as a blueprint for fundamental political change in China in the years to come. The signers of the document will form an informal group, open-ended in size but united by a determination to promote democratization and protection of human rights in China and beyond.

—Perry Link

I. FOREWORD

A hundred years have passed since the writing of China's first constitution. 2008 also marks the sixtieth anniversary of the promulgation of the "Universal Declaration of Human Rights," the thirtieth anniversary of the appearance of the Democracy Wall in Beijing, and the tenth of China's signing of the International Covenant on Civil and Political Rights. We are approaching the twentieth anniversary of the 1989 Tiananmen massacre of pro-democracy student protesters. The Chinese people, who have endured human rights disasters and uncountable struggles across these same years, now include many who see clearly that freedom, equality, and human rights are universal values of humankind and that democracy and constitutional government are the fundamental framework for protecting these values.

By departing from these values, the Chinese government's approach to "modernization" has proven disastrous. It has stripped people of their rights, destroyed their dignity, and corrupted normal human intercourse. So we ask: Where is China headed in the twenty-first century? Will it continue with "modernization" under authoritarian rule, or will it embrace universal human values, join the mainstream of civilized nations, and build a democratic system? There can be no avoiding these questions.

The shock of the Western impact upon China in the nineteenth century laid bare a decadent authoritarian system and marked the beginning of what is often called "the greatest changes in thousands of years" for China. A "self-strengthening movement" followed, but this aimed simply at appropriating the technology to build gunboats and other Western material objects. China's humiliating naval defeat at the hands of Japan in 1895 only confirmed the obsolescence of China's system of government. The first attempts at modern political change came with the ill-fated summer of reforms in 1898, but these were cruelly crushed by ultraconservatives at China's imperial court. With the revolution of 1911, which inaugurated Asia's first republic, the authoritarian imperial system that had lasted for centuries was finally supposed to have been laid to rest. But social conflict inside our country and external pressures were to prevent it; China fell into a patchwork of warlord fiefdoms and the new republic became a fleeting dream.

The failure of both "self-strengthening" and political renovation caused many of our forebears to reflect deeply on whether a "cultural illness" was afflicting our country. This mood gave rise, during the May Fourth Movement of the late 1910s, to the championing of "science and democracy." Yet that effort, too, foundered as warlord chaos persisted and the Japanese invasion [beginning in Manchuria in 1931] brought national crisis.

Victory over Japan in 1945 offered one more chance for China to move toward modern government, but the Communist defeat of the Nationalists in the civil war thrust the nation into the abyss of totalitarianism. The “new China” that emerged in 1949 proclaimed that “the people are sovereign” but in fact set up a system in which “the Party is all-powerful.” The Communist Party of China seized control of all organs of the state and all political, economic, and social resources, and, using these, has produced a long trail of human rights disasters, including, among many others, the Anti-Rightist Campaign (1957), the Great Leap Forward (1958–1960), the Cultural Revolution (1966–1969), the June Fourth [Tiananmen Square] Massacre (1989), and the current repression of all unauthorized religions and the suppression of the weiquan rights movement [a movement that aims to defend citizens’ rights promulgated in the Chinese Constitution and to fight for human rights recognized by international conventions that the Chinese government has signed]. During all this, the Chinese people have paid a gargantuan price. Tens of millions have lost their lives, and several generations have seen their freedom, their happiness, and their human dignity cruelly trampled.

During the last two decades of the twentieth century the government policy of “Reform and Opening” gave the Chinese people relief from the pervasive poverty and totalitarianism of the Mao Zedong era, and brought substantial increases in the wealth and living standards of many Chinese as well as a partial restoration of economic freedom and economic rights. Civil society began to grow, and popular calls for more rights and more political freedom have grown apace. As the ruling elite itself moved toward private ownership and the market economy, it began to shift from an outright rejection of “rights” to a partial acknowledgment of them.

In 1998 the Chinese government signed two important international human rights conventions; in 2004 it amended its constitution to include the phrase “respect and protect human rights”; and this year, 2008, it has promised to promote a “national human rights action plan.” Unfortunately most of this political progress has extended no further than the paper on which it is written. The political reality, which is plain for anyone to see, is that China has many laws but no rule of law; it has a constitution but no constitutional government. The ruling elite continues to cling to its authoritarian power and fights off any move toward political change.

The stultifying results are endemic official corruption, an undermining of the rule of law, weak human rights, decay in public ethics, crony capitalism, growing inequality between the wealthy and the poor, pillage of the natural environment as well as of the human and historical environments, and the exacerbation of a long list of social conflicts, especially, in recent times, a sharpening animosity between officials and ordinary people.

As these conflicts and crises grow ever more intense, and as the ruling elite continues with impunity to crush and to strip away the rights of citizens to freedom, to property, and to the pursuit of happiness, we see the powerless in our society—the vulnerable groups, the people who have been suppressed and monitored, who have suffered cruelty and even torture, and who have had no adequate avenues for their protests, no courts to hear their pleas—becoming more militant and raising the possibility of a violent conflict of disastrous proportions. The decline of the current system has reached the point where change is no longer optional.

II. OUR FUNDAMENTAL PRINCIPLES

This is a historic moment for China, and our future hangs in the balance. In reviewing the political modernization process of the past hundred years or more, we reiterate and endorse basic universal values as follows:

Freedom. Freedom is at the core of universal human values. Freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom in where to live, and the freedoms to strike, to demonstrate, and to protest, among others, are the forms that freedom takes. Without freedom, China will always remain far from civilized ideals.

Human rights. Human rights are not bestowed by a state. Every person is born with inherent rights to dignity and freedom. The government exists for the protection of the human rights of its citizens. The exercise of state power must be authorized by the people. The succession of political disasters in China’s recent history is a direct consequence of the ruling regime’s disregard for human rights.

Equality. The integrity, dignity, and freedom of every person—regardless of social station, occupation, sex, economic condition, ethnicity, skin color, religion, or political belief—are the same as those of any other. Principles of equality before the law and equality of social, economic, cultural, civil, and political rights must be upheld.

Republicanism. Republicanism, which holds that power should be balanced among different branches of government and competing interests should be served, resem-

bles the traditional Chinese political ideal of “fairness in all under heaven.” It allows different interest groups and social assemblies, and people with a variety of cultures and beliefs, to exercise democratic self-government and to deliberate in order to reach peaceful resolution of public questions on a basis of equal access to government and free and fair competition.

Democracy. The most fundamental principles of democracy are that the people are sovereign and the people select their government. Democracy has these characteristics: (1) Political power begins with the people and the legitimacy of a regime derives from the people. (2) Political power is exercised through choices that the people make. (3) The holders of major official posts in government at all levels are determined through periodic competitive elections. (4) While honoring the will of the majority, the fundamental dignity, freedom, and human rights of minorities are protected. In short, democracy is a modern means for achieving government truly “of the people, by the people, and for the people.”

Constitutional rule. Constitutional rule is rule through a legal system and legal regulations to implement principles that are spelled out in a constitution. It means protecting the freedom and the rights of citizens, limiting and defining the scope of legitimate government power, and providing the administrative apparatus necessary to serve these ends.

III. WHAT WE ADVOCATE

Authoritarianism is in general decline throughout the world; in China, too, the era of emperors and overlords is on the way out. The time is arriving everywhere for citizens to be masters of states. For China the path that leads out of our current predicament is to divest ourselves of the authoritarian notion of reliance on an “enlightened overlord” or an “honest official” and to turn instead toward a system of liberties, democracy, and the rule of law, and toward fostering the consciousness of modern citizens who see rights as fundamental and participation as a duty. Accordingly, and in a spirit of this duty as responsible and constructive citizens, we offer the following recommendations on national governance, citizens’ rights, and social development:

1. *A New Constitution.* We should recast our present constitution, rescinding its provisions that contradict the principle that sovereignty resides with the people and turning it into a document that genuinely guarantees human rights, authorizes the exercise of public power, and serves as the legal underpinning of China’s democratization. The constitution must be the highest law in the land, beyond violation by any individual, group, or political party.

2. *Separation of Powers.* We should construct a modern government in which the separation of legislative, judicial, and executive power is guaranteed. We need an Administrative Law that defines the scope of government responsibility and prevents abuse of administrative power. Government should be responsible to taxpayers. Division of power between provincial governments and the central government should adhere to the principle that central powers are only those specifically granted by the constitution and all other powers belong to the local governments.

3. *Legislative Democracy.* Members of legislative bodies at all levels should be chosen by direct election, and legislative democracy should observe just and impartial principles.

4. *An Independent Judiciary.* The rule of law must be above the interests of any particular political party and judges must be independent. We need to establish a constitutional supreme court and institute procedures for constitutional review. As soon as possible, we should abolish all of the Committees on Political and Legal Affairs that now allow Communist Party officials at every level to decide politically sensitive cases in advance and out of court. We should strictly forbid the use of public offices for private purposes.

5. *Public Control of Public Servants.* The military should be made answerable to the national government, not to a political party, and should be made more professional. Military personnel should swear allegiance to the constitution and remain nonpartisan. Political party organizations must be prohibited in the military. All public officials including police should serve as nonpartisans, and the current practice of favoring one political party in the hiring of public servants must end.

6. *Guarantee of Human Rights.* There must be strict guarantees of human rights and respect for human dignity. There should be a Human Rights Committee, responsible to the highest legislative body, that will prevent the government from abusing public power in violation of human rights. A democratic and constitutional China especially must guarantee the personal freedom of citizens. No one should suffer illegal arrest, detention, arraignment, interrogation, or punishment. The system of “Reeducation through Labor” must be abolished.

7. *Election of Public Officials.* There should be a comprehensive system of democratic elections based on “one person, one vote.” The direct election of administrative heads at the levels of county, city, province, and nation should be systematically implemented. The rights to hold periodic free elections and to participate in them as a citizen are inalienable.

8. *Rural—Urban Equality.* The two-tier household registry system must be abolished. This system favors urban residents and harms rural residents. We should establish instead a system that gives every citizen the same constitutional rights and the same freedom to choose where to live.

9. *Freedom to Form Groups.* The right of citizens to form groups must be guaranteed. The current system for registering nongovernment groups, which requires a group to be “approved,” should be replaced by a system in which a group simply registers itself. The formation of political parties should be governed by the constitution and the laws, which means that we must abolish the special privilege of one party to monopolize power and must guarantee principles of free and fair competition among political parties.

10. *Freedom to Assemble.* The constitution provides that peaceful assembly, demonstration, protest, and freedom of expression are fundamental rights of a citizen. The ruling party and the government must not be permitted to subject these to illegal interference or unconstitutional obstruction.

11. *Freedom of Expression.* We should make freedom of speech, freedom of the press, and academic freedom universal, thereby guaranteeing that citizens can be informed and can exercise their right of political supervision. These freedoms should be upheld by a Press Law that abolishes political restrictions on the press. The provision in the current Criminal Law that refers to “the crime of incitement to subvert state power” must be abolished. We should end the practice of viewing words as crimes.

12. *Freedom of Religion.* We must guarantee freedom of religion and belief, and institute a separation of religion and state. There must be no governmental interference in peaceful religious activities. We should abolish any laws, regulations, or local rules that limit or suppress the religious freedom of citizens. We should abolish the current system that requires religious groups (and their places of worship) to get official approval in advance and substitute for it a system in which registry is optional and, for those who choose to register, automatic.

13. *Civic Education.* In our schools we should abolish political curriculums and examinations that are designed to indoctrinate students in state ideology and to instill support for the rule of one party. We should replace them with civic education that advances universal values and citizens’ rights, fosters civic consciousness, and promotes civic virtues that serve society.

14. *Protection of Private Property.* We should establish and protect the right to private property and promote an economic system of free and fair markets. We should do away with government monopolies in commerce and industry and guarantee the freedom to start new enterprises. We should establish a Committee on State-Owned Property, reporting to the national legislature, that will monitor the transfer of state-owned enterprises to private ownership in a fair, competitive, and orderly manner. We should institute a land reform that promotes private ownership of land, guarantees the right to buy and sell land, and allows the true value of private property to be adequately reflected in the market.

15. *Financial and Tax Reform.* We should establish a democratically regulated and accountable system of public finance that ensures the protection of taxpayer rights and that operates through legal procedures. We need a system by which public revenues that belong to a certain level of government—central, provincial, county or local—are controlled at that level. We need major tax reform that will abolish any unfair taxes, simplify the tax system, and spread the tax burden fairly. Government officials should not be able to raise taxes, or institute new ones, without public deliberation and the approval of a democratic assembly. We should reform the ownership system in order to encourage competition among a wider variety of market participants.

16. *Social Security.* We should establish a fair and adequate social security system that covers all citizens and ensures basic access to education, health care, retirement security, and employment.

17. *Protection of the Environment.* We need to protect the natural environment and to promote development in a way that is sustainable and responsible to our descendants and to the rest of humanity. This means insisting that the state and its officials at all levels not only do what they must do to achieve these goals, but also accept the supervision and participation of nongovernmental organizations.

18. *A Federated Republic.* A democratic China should seek to act as a responsible major power contributing toward peace and development in the Asian Pacific region

by approaching others in a spirit of equality and fairness. In Hong Kong and Macao, we should support the freedoms that already exist. With respect to Taiwan, we should declare our commitment to the principles of freedom and democracy and then, negotiating as equals and ready to compromise, seek a formula for peaceful unification. We should approach disputes in the national-minority areas of China with an open mind, seeking ways to find a workable framework within which all ethnic and religious groups can flourish. We should aim ultimately at a federation of democratic communities of China.

19. *Truth in Reconciliation.* We should restore the reputations of all people, including their family members, who suffered political stigma in the political campaigns of the past or who have been labeled as criminals because of their thought, speech, or faith. The state should pay reparations to these people. All political prisoners and prisoners of conscience must be released. There should be a Truth Investigation Commission charged with finding the facts about past injustices and atrocities, determining responsibility for them, upholding justice, and, on these bases, seeking social reconciliation.

China, as a major nation of the world, as one of five permanent members of the United Nations Security Council, and as a member of the UN Council on Human Rights, should be contributing to peace for humankind and progress toward human rights. Unfortunately, we stand today as the only country among the major nations that remains mired in authoritarian politics. Our political system continues to produce human rights disasters and social crises, thereby not only constricting China's own development but also limiting the progress of all of human civilization. This must change, truly it must. The democratization of Chinese politics can be put off no longer.

Accordingly, we dare to put civic spirit into practice by announcing Charter 08. We hope that our fellow citizens who feel a similar sense of crisis, responsibility, and mission, whether they are inside the government or not, and regardless of their social status, will set aside small differences to embrace the broad goals of this citizens' movement. Together we can work for major changes in Chinese society and for the rapid establishment of a free, democratic, and constitutional country. We can bring to reality the goals and ideals that our people have incessantly been seeking for more than a hundred years, and can bring a brilliant new chapter to Chinese civilization.

—Perry Link, December 18, 2008

